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To: Andrew Fishel
From: Don Gips *D Gips*
Date: July 7, 1995

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Re: Applications of Cellular Vision of New York for Modification of License (File No. 1-CF-P-94); Rulemaking to Amend Part 1 and 21 of the Commission's Rules (CC Docket No. 92-297)

In connection with CC Docket No. 92-297, Gregory Rosston, Ruth Milkman and I met with Michael R. Gardner and Shant Hovnanian, representatives of Cellular Vision of New York (CVNY) on July 5, 1995. We requested their views on possible ways to resolve issues in the docketed rulemaking proceeding. In response to our request, CVNY responded with the proposal reflected in the attached documents, which were submitted to me on July 6, 1995, at 4:44 p.m., prior to issuance of the Sunshine Notice for this proceeding. CVNY initially made this response orally and then followed up in writing.

Because the attached documents responding to the staff's request relate to the merits of CC Docket No. 92-297, I request that they, along with this memorandum, be placed in the record of that proceeding.

In addition, because CVNY's oral response to the staff's request and its follow-up memorandum address the merits of CVNY's pending license modification applications (File No. 1-CF-P-94), I request that a public notice be issued informing the parties to the proceeding of my memorandum and the accompanying documents. See 47 C.F.R. § 1.1204(b)(7) Note. By copy of this memorandum, I am separately requesting that the Wireless Telecommunications Bureau place this memorandum and the attached documents in the record of the application proceeding.

It should be noted that the document refers to an "agreement." No such agreement exists. In the referenced discussions with CVNY representatives, neither I nor any other Commission personnel indicated what action the Commission would take. We also did not articulate any of the proposed items listed in the memorandum but rather asked CVNY what conditions they were seeking in connection with a proposal to adopt rules providing for 900 MHz of contiguous spectrum for licenses in the Local Multipoint Distribution Service.


cc: Susan Magnotti
Wireless Telecommunications Bureau

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MEMORANDUM

By Facsimile

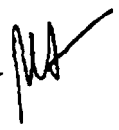
TO: Don Gips
FROM: Mickey Gardner 
DATE: July 6, 1995
SUBJECT: CVNY License Renewal

As requested this afternoon, enclosed is a memo to the file that codifies our agreement regarding the CVNY license renewal. We thought that you should have this memo during sunshine to insure that there is no confusion about the terms of our agreement. Since this document relates primarily to the license renewal issue, we have not put it in the rulemaking record. However, if you wish to put it in the record, please do so or ask us to do so.

While we continue to believe 950 contiguous MHz for LMDS is warranted, we will support this agreement to be reduced from CVNY's existing 1,000 MHz to 900 MHz with the clear understanding that you articulated that the existing New York license will be expanded to whatever service area the Commission adopts for LMDS with no auction or payment requirements, with an early renewal, and the build out can commence with the immediate approval of the transmitter application that has completed public notice, and the 33 pending transmitter applications will be immediately processed and approved. We do so because this approach also will avoid further delay that litigation will involve if the 34 transmitters continue to be held up, keeping us from reaching cable weary consumers throughout New York as well as launching our IPO.

Enclosure

TO: The File

FROM: Mickey Gardner 

DATE: July 6, 1995

SUBJECT: Agreement with Don Gips, Deputy Chief, FCC Office of Policy and Planning, Acting on Behalf of the FCC, and Shant Hovnanian and Mickey Gardner, Acting on Behalf of CVNY Regarding License Renewal of CVNY's Commercial LMDS License in New York

At Don Gips request during a July 5, 1995 meeting with FCC staff members Ruth Milkman, Senior Legal Advisor to Chairman Hundt and Greg Rosston of OPP, we called today to respond to Don's proposal that we agree to a compromise 900 contiguous MHz allocation of 28 GHz spectrum from 27.5 to 28.4 GHz for licensing LMDS nationwide in return for the following:

(1) CVNY will agree to conform its current one GHz commercial license (27.5-28.5 GHz) to the 27.5-28.4 nationwide LMDS allocation.

(2) Since CVNY is the incumbent licensee in New York, and in return for relinquishing 100 MHz from its current license allocation, the Commission will provide for early renewal of CVNY's 900 MHz license authorizing CVNY to provide two-way video, voice and data services for whatever service area the FCC adopts for LMDS, whether for a BTA or BEA service area, without being subject to any form of payment, auction or otherwise.

(3) In regard to the Commission's early renewal of CVNY's license, after the July 13 meeting, CVNY will file for early renewal, and the Commission will immediately process that application so that full term renewal of CVNY's license for the expanded service area will be granted prior to the current licenses' February 1996 expiration date.

(4) In response to CVNY's Supplemental Motion to Expedite filed July 5, 1995, CVNY's 34 pending transmitter applications will be immediately processed and approved in accordance with the provisions noted above in points (1), (2) and (3).

(5) In terms of procedure, at its July 13 meeting, the Commission will adopt an item that will include language explicitly confirming the provisions noted above in points (1), (2), (3) and (4).

(6) The Commission would move with all appropriate dispatch to license LMDS providers throughout the United States with 900 MHz of contiguous spectrum from 27.5 - 28.4. A single license can aggregate all segments of spectrum within that 900 MHz, as well as the 150 MHz of co-primary LMDS spectrum in the 29 GHz band.